United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

74-1275

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

-against-

JOSEPH LISI,

Appellant.

On Appeal From The United States
District Court For The Eastern
District of New York

BRIEF FOR APPELLANT JOSEPH LISI

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APPLICABLE STATUTES

TITLE 18 UNITED STATES CODE, §3500, provides as follows:

§3500. Demands for production of statements and reports of witnesses

(a) In any criminal prosecution brought by the United States, no statement or report in the possession of the United States which was made by a Government witness or prospective Government witness (other than the defendant) shall be the subject of subpena, discovery, or inspection until said witness has testified on direct examination in the trial of the case.

(b) After a witness called by the United States has testified on direct examination, the court shall, on motion of the defendant, order the United States to produce any statement (as hereinafter defined) of the witness in the possession of the United States which relates to the subject matter as to which the witness has testified. If the entire contents of any such statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.

(c) If the United States claims that any statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony of the witness, the court shall order the United States to deliver such statement for the inspection of the court in camera. Upon such delivery the court shall exercise the portions of such statement which do not relate to the subject matter of the testimony of the witness. With such material excised, the court shall then direct delivery of such statement to the defendant for his use. If, pursuant to such procedure, any portion of such statement is withheld from the defendant and the defendant objects to such withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of such statement shall be preserved by the United States and, in the event the defendant appeals, shall be

made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge. Whenever any statement is delivered to a defendant pursuant to this section, the court in its discretion, upon application of said defendant, may recess proceedings in the trial for such time as it may determine to be reasonably required for the examination of such statement by said defendant and his preparation for its use in the trial.

(d) If the United States elects not to comply with an order of the court under subsection (b) or (c) hereof to deliver to the defendant any such statement, or such portion hereof as the court may direct, the court shall strike from the record the testimony of the witness, and the trial shall proceed unless the court in its discretion shall determine that the interests of justice require that a mistrial be declared.

(e) The term "statement," as used in subsections (b), (c), and (d) of this section in relation to any witness called by the United States, means--

(1) a written statementmade by said witness and signed or otherwise adopted or approved by him;

(2) a stenographic, mechanical, electrical, or other recording, or a transcript ion thereof, which is a substantially verbatim recital of an oral statement made by said witness and recorded contemporaneously with the making of such oral statement; or

(3) a statement, however taken or recorded, or a transcription thereof, if any, made by said witness to a grand jury.

As amended Pub. L. 91-452, Title 1, §102, Oct. 15, 1970. 84 Stat. 926

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Appellee,

-against-

Docket No. 74-1275

JOSEPH LISI,

Appellant.

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BRIEF FOR APPELLANT, JOSEPH LISI.

PRELIMINARY STATEMENT

This is an appeal from a judgment of conviction rendered on February 22, 1974 in the Federal District Court for the Eastern District of New York, convicting the Appellant after trial before Hon. Jack B. Weinstein and a jury, of violating the provisions of Title 18 United States Code §§659 and 2 (Count 1) and Title 18 United States Code §371 (Count 2). In substance, Appellant was charged with the unlawful possession of certain stolen merchandise which had constituted a foreign shipment of freight, knowing that the same had been stolen. He was further charged with conspiracy to commit said crime. Appellant was

sentenced to serve a four year term of imprisonment on each of the two counts, to run concurrently. However, pursuant to Title 18 United States Code §3651, the said sentence is to be served at the Community Treatment Center in Manhattan for a period of three months and the remainder is suspended. Appellant was also placed on probation for a period of four years.

Timely notice of appeal was filed on February 22, 1974.

ISSUE PRESENTED

WHETHER OR NOT THE PURPOSEFUL WITHHOLDING OF 3500 MATERIAL BY THE GOVERNMENT DENIED THE DEFENDANT A FAIR TRIAL.

STATEMENT OF FACTS

Count ONE of Indictment 72CR422 charged appellant, Joseph Lisi, along with others, with the unlawful possession of certain stolen merchandise which had constituted a foreign shipment of freight, knowing that the same had been stolen (Title 18 United States Code, Section 659 and 2). Count TWO charged appellant with a conspiracy to commit the same crime (Title 18 United States Code, Section 371).

On November 9, 1973 appellant, Joseph Lisi, and his father, Thomas Lisi, proceeded to trial before Hon. Jack B. Weinstein and a jury.

At the outset of the trial, appellants entered into a stipulation with the Government providing in substance: (1) that a truck carrying the shipment of merchandise covered by Count ONE of the indictment was stolen from the McGovern Trucking Company at 4:30 P.M. on December 15, 1970 within two or three blocks of 76 DeGraw Street, Brooklyn, New York; (2) that the aforesaid goods constituted a foreign shipment of freight; (3) that these goods were valued at approximately $100,000.00; (4) that the Government produced, as exhibits, certain samples of the stolen merchandise, which were seized at premises 76 DeGraw Street, by the Federal Bureau of Investigation on December 16, 1970; (5) that Lisi and Son, Inc., a corporation, was a tenant and was in operation of the premises known as 76 DeGraw Street on December 16, 1970; (6) that a 1970 Monte Carlo Chevrolet, New York License 6912VZ, was a vehicle owned and operated by Lisi and Son, Inc.; and (7) that a lock found on the loading platform at 76 DeGraw Street had been used on the truck from which the goods were stolen (16-20).[1]

Ronald G. Pyle, special agent of the Federal Bureau of Investigation, was the sole Government witness on its direct

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[1] Numerical references are to the trial transcript.

case. Pyle testified that he conducted a surveillance of 76 DeGraw Street along with other agents beginning at 5:25 A.M. on December 16, 1970.

At 6:52 A.M., three unknown individuals had a conversation in a blue Chevrolet parked in front of the premises for approximately ten to fifteen minutes. At approximately 7:30 A.M., an individual known to Agent Pyle as Henry Serrapica drove up to the premises, parked his Cadillac automobile and entered the premises through a small side door after unlocking the same. Moments later the large bay door was raised. One or two minutes later, an individual known to Agent Pyle as Louis Felice drove a Dodge straight truck through the bay door. Serrapica walked back in and the door went down. Felice then left the building and drove off in the Cadillac.

Four or five minutes later Felice returned. After remaining two or three minutes he departed. He returned again after several minutes. Four or five minutes thereafter, a brown Buick automobile pulled up to the premises and parked. Two unknown individuals entered the building. Two minutes later, at approximately 8:02 A.M. Felice and Serrapica left the building and drove off. At approximately 8:20 A.M. Serrapica returned in the Cadillac and Felice followed him in another Dodge straight truck, which was driven through the bay door.

At approximately 8:25 A.M. appellant, Joseph Lisi, was seen for the first time backing a 1970 Monte Carlo Chevrolet onto the street and driving off. Ten minutes later the two individuals who had arrived in the brown Buick left the building and departed in the same Buick automobile.

At approximately 8:45 A.M. appellant, Joseph Lisi, returned in the Chevrolet and parked in the street. Ten minutes later two unknown individuals in a blue Buick entered the building. They departed after twenty-five minutes.

At about 9:45 A.M., Thomas Lisi drove up in a yellow Chevrolet and parked in front of the building. He entered the premises. Another unknown individual got out of the same car and walked away. Twenty minutes later Louis Felice left the building and drove off in the Cadillac. Shortly thereafter Henry Serrapica walked away from the premises. About three or four minutes later appellant, Joseph Lisi, emerged from the premises and backed the Monte Carlo Chevrolet into the building through the bay door. Serrapica thereafter returned and reentered the building. After ten minutes elapsed, at approximately 10:14 A.M., one, Antony Annicharico, drove a green panel truck through the bay door of the building. Surveillance was then discontinued and at approximately 10:15 A.M., the agents entered the premises with a search warrant.

Upon entering, Pyle observed the two straight trucks which had been driven by Felice backed up to the loading platform at the rear of the premises. The green panel truck was also backed up to the loading dock with Serrapica standing behind it and Annicharico sitting inside. The two Lisis, appellant and his father, were in a partitioned office inside the premises.

The straight trucks were loaded with cartons of merchandise which had been stolen. Other cartons of these goods were stacked up on the loading platform.

The Lisis were thereafter arrested. A stolen transistorized walkie-talkie was found in the office. Upon searching the 1970 Monte Carlo Chevrolet which appellant, Joseph Lisi, was seen to have been driving, a carton containing a stolen dinner set and two walkie-talkies were found (21-40).

The merchandise which had been discovered and seized by the F.B.I. was specifically described by Agent Pyle as follows (37):

> Q Did there come a time when you did an inventory of the merchandise in the warehouse?
>
> A Yes.
>
> Q What did the inventory disclose?
>
> A I don't recall the exact numbers but I made a report showing exactly how many cartons we recovered.
>
> Q Would you like to refresh your recollection?
>
> A Yes I would.

MR. KAPLAN: This has been marked as Government's exhibit 1 for identification. I ask you to look at the report to refresh your recollection.

A On page three of the report dated December 22, 1970, it shows that we recovered 313 cartons of Soundesign AM/FM radios; 189 cartons of transistorized walkie-talkies; 30 cartons of Hic wooden pencils and 271 cartons of dinner sets.

Q Thank you.

In supplying this testimony, Pyle read directly from a part of Government's exhibit 1 for identification, which was included in the 3500 material supplied to the defense (A. 39).[2.]

Upon cross examination, Agent Pyle stated that he did not know Thomas Lisi or appellant, Joseph Lisi, until the time of the arrest. He did, however, know Henry Serrapica and Louis Felice as having been connected with other hijackings (40-41). During the surveillance there were numerous trucks passing through DeGraw Street (43-44).

Pyle further stated on cross examination that he did not recall whether the rear ends of the trucks which were backed up against the loading platform could be seen from the office (66). Moreover, with regard to the stolen merchandise found in the corporation-owned Monte Carlo Chevrolet which Joseph Lisi was seen to be driving, that merchandise was found in the trunk of the car and the trunk had been locked (68). In addition, both

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2. Numerical references preceded by the letter "A" refer to the Appendix.

Felice and Serrapica had pleaded guilty to the charge of unlawfully possessing the merchandise covered by the present indictment (69). Pyle did not know what time appellant, Joseph Lisi, arrived at the premises (77). He first saw appellant at 8:25 A.M. (79).

During Agent Pyle's cross examination, he brought out the fact that certain stolen yards of piece goods - material not covered by the indictment - were also found on the premises (55-56) (see P. 16 infra.). At that point, counsels' motions for a mistrial was denied. On the morning of the next trial day, upon being informed that the Government had withheld the 3500 material referring to this merchandise (A. 44-A. 51), defense counsel renewed their motions for a mistrial, which were denied (97-98).

Thomas Lisi, the codefendant and father of appellant, Joseph Lisi, was the first defense witness. He testified that he is the owner of Lisi & Son, which was a storage warehouse located at 76 DeGraw Street. He had been in business at the DeGraw Street address since June of 1970. Thomas Lisi's primary function was to solicit business. Sometimes the business rented space for parking trucks and trailers. He had known Louis Felice for about fifteen years. Felice had been his employee since

November of 1970. Felice's job was to receive the freight, store it in the warehouse and make deliveries. He (Felice) had the keys to the business and he opened the place in the morning. Henry Serrapica helped out Felice once in awhile. He was Felice's employee. His son, Thomas Lisi, was not an owner of the business. Joseph began working for Lisi & Son in January of 1970 and stopped working there on September 3, 1970.

Thomas Lisi further testified that his son, Joseph, came to work on December 16, 1970 at his (Thomas') request. Since Thomas had suffered a facial injury and since Felice had stated that he would be absent for part of the day, Thomas asked Joseph to take the phone calls from customers coming into the office.

Thomas Lisi stated that he arrived at the Lisi & Son premises at 10:00 o'clock on December 16, 1970. He arrived in a 1970 Chevrolet Nova automobile rented in the name of the corporation. In addition to that car, the 1970 Chevrolet Monte Carlo automobile (which Joseph was seen to have been driving) was also a company car. One set of keys to the latter were kept in the office and another set was kept by Thomas. When he entered the premises he saw two produce trucks which he did not recognize. He went to the office and asked his son to find Felice. Joseph left but returned without Felice. Thomas and

Joseph were then discussing a call from a customer when the F.B.I. raid took place. Both men were in the office at that time.

The elder Lisi further stated that the barrels on the premises were chemical drums normally stored therein, but he knew nothing of any yarn that was found inside said drums. He never gave Felice permission to bring a truck carrying stolen goods onto the premises. He did not know that any of the stolen goods were in his warehouse (99-114).

Upon further examination, Thomas Lisi stated that Lisi & Son was a corporation which he established. He alone signed the lease for the premises and he also found the warehouse. He identified his son's payroll record (Defendant's Exhibit B) which showed the dates of Joseph's employment to be between January 8, 1970 and September 3, 1970. He repeated that Joseph went to work on December 16th at his request, for the purpose of answering the phones. When he (Thomas) arrived on that date, Joseph was in the office. The Monte Carlo Chevrolet was used for deliveries of small packages and the keys were normally kept in the office. Louis Felice was permitted to use this automobile. When Joseph was working he was also permitted to drive that car (114-142).

Appellant, Joseph Lisi, followed his father to the witness stand. He stated, in substance, that he was a twenty-nine year old electrician, that he was presently employed, and that he worked for Lisi & Son, Inc. from the beginning of 1970 to September 3, 1970. On December 15, 1970 his father asked him to go into work to answer the phones because of Louis Felice's probable absence during part of December 16th. Joseph agreed. When he arrived at work the next morning Felice and Serrapica were present and he (Joseph) went straight to the office. He then went out for breakfast, using the Monte Carlo Chevrolet for transportation. The keys were in the ignition. When he returned he put them in his pocket. This was the set that normally hung in the office. He then made some phone calls in the office. He noticed two trucks in the warehouse but they took on no special significance for him. When Serrapica came into the office Joseph asked him about the trucks and Serrapica referred him to Felice. When Joseph later questioned Felice about the trucks he was told that they were on the premises for storage purposes and that Felice would explain it to Joseph's father. Joseph stated that he never knew there was stolen property on the premises, that he never possessed any stolen property and that he never agreed with anyone to possess stolen property (142-153).

Upon cross examination, appellant stated that he must have seen the goods, but that the presence of cartons in a warehouse meant nothing out of the ordinary so far as he was concerned. He further testified that he did not open the trunk of the Monte Carlo Chevrolet, although he did drive that car. He did not know whether anyone else had driven it. He did not remember whether he had told an F.B.I. agent that he worked for Lisi & Son, Incorporated. When the agents produced a search warrant, Joseph pointed to an error in the address and told them that they were in the wrong place. He might have told them to get out (154-174).

After the defense rested, the Government began its case on rebuttal by calling Terrence Joseph DiStasi, Vice-President of Paramount Express. He testified that a shipment of yarn was stolen from one of his company's trucks on December 4, 1970 and that some of this yarn was recovered by him from certain drums at the Lisi warehouse on December 17, 1970 (185-193).

The next rebuttal witness was F.B.I. Agent Mark Thornton. He testified that the abovementioned stolen yarn was discovered on the Lisi premises on December 16, 1970. The yarn was found in barrels, or drums, which were in the back, alongside the wall (193-196).

On cross examination Thornton stated that Thomas Lisi had a red welt on his face when he entered the premises on December 16th (197).

It was thereafter stipulated that the driver of a Paramount Express truck would testify that the abovementioned yarn was on board his truck when it was hijacked on December 4, 1970, approximately three blocks from the Lisi premises (201).

Agent Ronald G. Pyle was then recalled by the defense. He testified that the F.B.I. made no fingerprint tests on the cartons found on the warehouse platform or in the trunk of the Monte Carlo Chevrolet (202).

Upon cross examination Pyle stated that when Joseph Lisi looked at the search warrant he told the agents that they were at the wrong address, and further told them to get out. As a matter of fact, the search warrant did bear the wrong address (202-203).

On the morning of November 13, 1973, the jury acquitted Thomas Lisi on both counts of the indictment. Joseph Lisi was convicted on both counts.

POINT I

THE PURPOSEFUL WITHHOLDING OF 3500 MATERIAL BY THE GOVERNMENT DENIED THE DEFENDANT A FAIR TRIAL

Crucial to the issue of guilt or innocence in the case at bar was the question of guilty knowledge on the part of the defendants. It was the contention of appellant, Joseph Lisi, that he had not been employed at Thomas Lisi & Son, Inc. since September 3, 1970 and that he had come to work on December 16, 1970 only for that particular day at the request of his injured father. He insisted that he took no special notice of the cartons on the rear platform and had no knowledge that any stolen merchandise was on the premises. Of prime importance, then, was the proper presentation of this defense to the jury.

Anticipating the defense which would be raised, the Government decided to withhold certain evidence for rebuttal. This evidence consisted of the discovery of certain stolen yarn found in empty cardboard drums or barrels on the premises when the agents carried out their raid. Appellants were neither charged with nor indicted for the possession of said yarn, which had apparently been stolen on December 4, 1970.

At the very outset of the trial, before the selection of the jury, the Government promptly announced that "The first exhibit is 3500 material handed over to the defendant, both defense counsel" (3). This was Government's exhibit 1 for identification. This material (A. 19-A. 43) had, indeed, been given to defense counsel, but without a word to the effect that some 3500 material had been withheld.

The 3500 material which was delivered to defense counsel (A. 19-A. 43) consisted of the F.B.I. FD-302 Reports covering the discovery at the Lisi warehouse of part of a December 15, 1970 shipment -- the material referred to in the indictment (A. 39).

The 3500 material which was withheld from the defense (A. 44-A. 51) consisted of the F.B.I. FD-302 Reports covering the discovery -- as the result of the same raid of the same premises -- of the yarn, which was part of a December 4, 1970 shipment (A. 51). This material was provided after the Government rested its direct case (98). (Government's Exhibit No. 8 for Identification).

Those portions of the FD-302 reports (both furnished and withheld by the Government) which specified the merchandise seized by the F.B.I. were compiled by the same agents (compare A. 39 with A. 51). One of these agents was Ronald G. Pyle,

who provided the Government's direct testimony.

Nothing was mentioned in Agent Pyle's direct testimony about the stolen yarn which had been discovered by the F.B.I. It was, however, during the following cross examination that the agent decided to present this information (at 55-56):

> MR. BRILL: May I have that picture for a moment, ma'am?
>
> (Document handed to counsel by juror)
>
> Q Do you see containers?
>
> A Yes.
>
> Q Did they contain merchandise?
>
> A I know what they contain, some of them. Do you want me to describe what I found inside?
>
> Q You can do that.
>
> A We opened several of the containers and discovered an unknown chemical substance and in numerous other containers we discovered some rolls of stolen -- yards of piece goods, apparently re-packed into these containers.
>
> MR. BRILL: May I approach the bench, your Honor?
>
> THE COURT: Ladies and gentlemen, why don't you go in and take a stretch in the jury room.
>
> (Jury excused at 12:25 p.m.)
>
> THE COURT: May I see exhibit 1 for identification?
>
> MR. KAPLAN: There are no deletions, by the way.

It was at this juncture that defense made its first motion for a mistrial. In reviewing the above questions and responses, one should, perhaps, make the following observations:

1) The stolen "yards of piece goods" to which the agent refers are apparently non-existent, since none were found or thereafter alluded to; 2) Assuming that the agent meant to say "stolen yarn," the "numerous other containers" to which he gratuitously refers were not those appearing in the photograph (Exhibit No. 7D) to which counsel's questions were directed. The yarn was discovered in the drums (or barrels) in the back of the premises alongside the wall (195-196); 3) Even at this point in the trial, when the Court requested to see the 3500 material which was provided to the defense (Exhibit 1 for Identification) the Government insisted to all that "There are no deletions, by the way" (56). It was not until the next trial day, after the Government had rested its case, that the defense was first informed of the existence of the withheld 3500 material. Motions for mistrial were thereupon renewed.

Of greater significance than the above, however, is the fact that the Government's withholding of 3500 material deprived the defense of much more than a simple danger signal indicating an area to be avoided on cross-examination. In proper possession

of the "stolen yarn" material, the defense may well have taken measures to lessen or change the impact of such evidence upon the jury and to prepare the jury for Joseph Lisi's defense. Firstly, the deliberate omission of any testimony regarding the yarn might well have been pointedly brought out on cross-examination. Then the date upon which the yarn was stolen (December 4, 1970) might have been elicited. Having thus shifted the source of this evidence, the defense may well have gained a more receptive attitude on the part of the jurors to the testimony of both Lisis concerning Joseph's dates of employment. The contention that two dishonest employees (who pleaded guilty) followed a course of illegal activity on the Lisi premises before Joseph returned to work there might have been given greater weight in evaluating Lisi's claim that he had no part in the December 16th activities.

Certainly, in taking the initiative regarding the "stolen yarn" evidence, and thus showing the jury that he had nothing to hide, the defendant might well have gained a more favorable jury evaluation of his credibility on the issue of guilty knowledge. In addition, the unfavorable impact of this evidence, coming in, as it did, by way of Government rebuttal, would have been materially weakened or nullified. No such options were open to

the defense because it had no knowledge of the stolen yarn. This knowledge was lacking because the necessary 3500 material was withheld.

The Government's contention that the defense was not entitled to the withheld 3500 material, even after Agent Pyle completed his direct examination (94-98) does not appear to be supported by law. The Form 302 F.B.I. report regarding the discovery of the stolen yarn on the date of the raid (A. 51) was a written statement made by the witness and signed or otherwise adopted or approved by him. Title 18 United States Code, Section 3500 (e) (1). Agent Pyle's name appears on the document itself. Compare Rosenberg v. United States, 360 U.S. 367, (1959) at 369. In addition, the said report related to the subject matter as to which the witness testified. Title 18 United States Code, Section 3500(b). So long as it related generally to the events and activities testified to, it should have been produced. Clancy v. United States, 365 U.S. 312, 315 (1961); United States v. O'Brien, 444 F. 2d 1082, 1086 (7th Cir. (1971); United States v. Borelli, 336 F. 2d 376, 393 (2d Cir. (1964); United States v. Cardillo, 316 F. 2d 606, 615 (2d Cir. (1963). The Government, by its trial strategy, should not be permitted to deprive the defense of information to which it is

entitled. The facts about which a witness has omitted to testify may be as important to the defense as those which he relates.

In Clancy v. United States, 365 U.S. 312 (1961) the Supreme Court stated as follows (at 316):

> "Since the production of at least some of the statements withheld was a right of the defense, it is not for us to speculate whether they could have been utilized effectively."

The Court then proceeded to quote as follows from Jencks v. United States, 353 U.S. 657 (1957) at 667:

> "Flat contradiction between the witness' testimony and the version of the events given in his report is not the only test of inconsistency. The omission from the reports of facts related at the trial, or a contrast in emphasis upon the same facts, even a different order of treatment, are also relevant to the cross-examining process of testing the credibility of a witness' trial testimony."

In United States v. Missler, 414 F. 2d 1293, 1303-4 (4th Cir. 1969) the Fourth Circuit clearly outlined the proper course of action to be taken in cases of withheld 3500 material. At 1303-4 it stated as follows:

> "The requirements of the Jencks Act are intended to provide defendants in federal prosecutions with an opportunity for thorough cross-examination of government witnesses, making the constitutionally guaranteed right of confrontation more meaningful. Violations of the statute are necessarily attended by the danger that this precious right will be impaired. For this reason, and also because it is ordinarily difficult upon review of a cold record to ascertain the value to the defense of a statement withheld, violation of the Act is excused only in extraordinary circumstances. **** Unless it is perfectly clear that the defense was not prejudiced by the omission, reversal is indicated." (Citations omitted)

The Second Circuit has indicated its agreement with the Fourth Circuit on the proper course of action to be followed. United States v. Aaron, 457 F. 2d 865, 869 2d Cir. (1972).

The deliberate withholding of 3500 material lessened the effectiveness of cross examination as it bore upon the issues of defendant's guilty knowledge and his overall credibility. The case at bar should be reversed.

CONCLUSION

THE JUDGMENT OF CONVICTION SHOULD BE REVERSED AND A NEW TRIAL ORDERED.

May 20, 1974.

Respectfully submitted,

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N.Y.C. List

STATE OF NEW YORK)
: SS:
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 20 day of May, 1974 deponent served the within Brief upon A.D.A. Attorney

attorney(s) for Galler

in this action, at 225 Cadman Plaza East
Brooklyn, N.Y.

the address designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

ROBERT BAILEY

Sworn to before me, this
20 day of May, 1974

William Bailey
WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1976